

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ADVANCE MAGAZINE PUBLISHERS INC.
d/b/a THE CONDÉ NAST PUBLICATIONS,

Plaintiff,

v.

ACTIV8NOW, LLC and ACTIVE8MEDIA, LLC,

Defendants,
Counterclaimants Activ8now
and Active8media

CIVIL ACTION NO. 05 CV 7516 (KMK)

v.

ADVANCE PUBLICATIONS, INC and RICHFX,
INC.,

Counterclaim Defendants,

**RICHFX, INC.'S AMENDED ANSWER, AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS TO DEFENDANTS ACTIV8NOW, LLC'S AND
ACTIVE8MEDIA, LLC'S AMENDED COUNTERCLAIMS**

RichFX, Inc. ("RichFX") responds to Defendants Activ8now, LLC's
("Activ8now") and Active8media, LLC's ("Active8media") Amended Counterclaims as
follows:

ANSWER

1. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Counterclaims, and therefore denies them.
2. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Counterclaims, and therefore denies them.

3. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Counterclaims, and therefore denies them.

4. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Counterclaims, and therefore denies them.

5. RichFX admits the allegation of paragraph 5 of the Counterclaims.

6. Answering the allegations in paragraph 6 of the Counterclaims, RichFX admits that Defendants have filed Counterclaims asserting subject matter jurisdiction pursuant to §§1331, 1338 and 1367, 35 U.S.C. §271 et seq., the provisions of the trademark laws of the United States of America, 35 U.S.C. §1125(a), and under the Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202, but otherwise, RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6, and therefore denies them.

7. Answering the allegations in paragraph 7 of the Counterclaims, RichFX admits that Defendants assert that venue is proper in this Court for purposes of Defendants' Counterclaims pursuant to 28 U.S.C. §§1391(b) and (c), but otherwise, RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7, and therefore denies them.

8. RichFX admits the allegations in paragraph 8 of the Counterclaims.

9. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Counterclaims, and therefore denies them.

10. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Counterclaims, and therefore denies

them, except that RichRX admits that U.S. Patent No. 6,535,889 issued on March 18, 2003.

11. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Counterclaims, and therefore denies them, except that RichFX admits that U.S. Patent No. 6,557,006 issued on April 29, 2003.

12. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Counterclaims, and therefore denies them.

13. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Counterclaims, and therefore denies them.

14. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Counterclaims, and therefore denies them.

15. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Counterclaims, and therefore denies them.

16. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Counterclaims, and therefore denies them.

17. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Counterclaims, and therefore denies them.

18. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Counterclaims, and therefore denies them.

19. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Counterclaims, and therefore denies them.

20. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Counterclaims, and therefore denies them.

21. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Counterclaims, and therefore denies them.

22. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Counterclaims, and therefore denies them.

23. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Counterclaims, and therefore denies them.

24. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Counterclaims, and therefore denies them.

25. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Counterclaims, and therefore denies them.

26. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Counterclaims, and therefore denies them.

27. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Counterclaims, and therefore denies them.

28. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Counterclaims, and therefore denies them.

29. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 of the Counterclaims, and therefore denies them.

30. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Counterclaims, and therefore denies them.

31. RichFX denies the allegations in paragraph 31 of the Counterclaims.

32. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 of the Counterclaims, and therefore denies them.

33. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 of the Counterclaims, and therefore denies them.

34. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 of the Counterclaims, and therefore denies them.

35. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Counterclaims, and therefore denies them.

36. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Counterclaims, and therefore denies them.

37. As to Conde Nast, RichFX lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37, and therefore denies the allegations of paragraph 37 of the Counterclaims. As to itself, RichFX denies each and every allegation in paragraph 37 of the Counterclaims.

38. As to Conde Nast, RichFX lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38, and therefore denies the allegations of paragraph 38 of the Counterclaims. As to itself, RichFX denies each and every allegation in paragraph 38 of the Counterclaims.

39. As to Conde Nast, RichFX lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39, and therefore denies the allegations of paragraph 39 of the Counterclaims. As to itself, RichFX denies each and every allegation in paragraph 39 of the Counterclaims.

40. As to Conde Nast, RichFX lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40, and therefore denies the allegations of paragraph 40 of the Counterclaims. As to itself, RichFX denies each and every allegation in paragraph 40 of the Counterclaims.

41. As to Conde Nast, RichFX lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41, and therefore denies the allegations of paragraph 41 of the Counterclaims. As to itself, RichFX denies each and every allegation in paragraph 41 of the Counterclaims.

42. As to Conde Nast, RichFX lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42, and therefore denies the allegations of paragraph 42 of the Counterclaims. As to itself, RichFX denies each and every allegation in paragraph 42 of the Counterclaims.

43. As to Conde Nast, RichFX lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43, and therefore denies the allegations of paragraph 43 of the Counterclaims. As to itself, RichFX denies each and every allegation in paragraph 43 of the Counterclaims.

44. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 of the Counterclaims, and therefore denies them.

45. As to Conde Nast, RichFX lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45, and therefore denies the allegations of paragraph 45 of the Counterclaims. As to itself, RichFX denies each and every allegation in paragraph 45 of the Counterclaims.

46. As to Conde Nast, RichFX lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46, and therefore denies the allegations of paragraph 46 of the Counterclaims. As to itself, RichFX denies each and every allegation in paragraph 46 of the Counterclaims.

47. RichFX denies the allegations of paragraph 47 of the Counterclaims.

48. RichFX denies the allegations of paragraph 48 of the Counterclaims.

49. RichFX denies the allegations of paragraph 49 of the Counterclaims.

50. RichFX denies the allegations of paragraph 50 of the Counterclaims.

51. RichFX denies the allegations of paragraph 51 of the Counterclaims.

52. RichFX denies the allegations of paragraph 52 of the Counterclaims.

53. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 of the Counterclaims, and therefore denies them.

54. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 of the Counterclaims, and therefore denies them.

55. RichFX denies the allegations paragraph 55 of the Counterclaims.

56. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 of the Counterclaims, and therefore denies them.

57. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 of the Counterclaims, and therefore denies them.

58. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58 of the Counterclaims, and therefore denies them.

59. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 of the Counterclaims, and therefore denies them.

60. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 of the Counterclaims, and therefore denies them.

61. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 of the Counterclaims, and therefore denies them.

62. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 62 of the Counterclaims, and therefore denies them.

COUNT I

63. With respect to paragraph 63 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 62 of the Counterclaims as though fully set forth herein.

64. RichFX denies the allegations of paragraph 64 of the Counterclaims.

65. RichFX denies the allegations of paragraph 65 of the Counterclaims.

66. RichFX denies the allegations of paragraph 66 of the Counterclaims.

67. RichFX denies the allegations of paragraph 67 of the Counterclaims.

COUNT II

68. With respect to paragraph 68 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 67 of the Counterclaims as though fully set forth herein.

69. RichFX denies the allegations of paragraph 69 of the Counterclaims.

70. RichFX denies the allegations of paragraph 70 of the Counterclaims.

71. RichFX denies the allegations of paragraph 71 of the Counterclaims.

72. RichFX denies the allegations of paragraph 72 of the Counterclaims.

COUNT III

73. With respect to paragraph 73 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 72 of the Counterclaims as though fully set forth herein.

74. RichFX denies the allegations of paragraph 74 of the Counterclaims.

75. RichFX denies the allegations of paragraph 75 of the Counterclaims.

76. RichFX denies the allegations of paragraph 76 of the Counterclaims.

77. RichFX denies the allegations of paragraph 77 of the Counterclaims.

COUNT IV

78. With respect to paragraph 78 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 77 of the Counterclaims as though fully set forth herein.

79. RichFX denies the allegations of paragraph 79 of the Counterclaims.

80. RichFX denies the allegations of paragraph 80 of the Counterclaims.

81. RichFX denies the allegations of paragraph 81 of the Counterclaims.

COUNT V

82. With respect to paragraph 82 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 81 of the Counterclaims as though fully set forth herein.

83. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 83 of the Counterclaims, and therefore denies them.

84. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 84 of the Counterclaims, and therefore denies them.

85. RichFX denies the allegations of paragraph 85 of the Counterclaims.

86. RichFX denies the allegations of paragraph 86 of the Counterclaims.

87. RichFX denies the allegations of paragraph 87 of the Counterclaims.

88. RichFX denies the allegations of paragraph 88 of the Counterclaims.

89. RichFX denies the allegations of paragraph 89 of the Counterclaims.

90. RichFX denies the allegations of paragraph 90 of the Counterclaims.

91. RichFX denies the allegations of paragraph 91 of the Counterclaims.

COUNT VI

92. With respect to paragraph 92 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 91 of the Counterclaims as though fully set forth herein.

93. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 93 of the Counterclaims, and therefore denies them.

94. RichFX denies the allegations of paragraph 94 of the Counterclaims.

95. RichFX denies the allegations of paragraph 95 of the Counterclaims.

96. RichFX denies the allegations of paragraph 96 of the Counterclaims.

COUNT VII

97. With respect to paragraph 97 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 96 of the Counterclaims as though fully set forth herein.

98. RichFX denies the allegations of paragraph 98 of the Counterclaims.

99. RichFX denies the allegations of paragraph 99 of the Counterclaims.

COUNT VIII

100. With respect to paragraph 100 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 99 of the Counterclaims as though fully set forth herein.

101. RichFX denies the allegations of paragraph 101 the Counterclaims.

102. RichFX denies the allegations of paragraph 102 the Counterclaims.

103. RichFX denies the allegations of paragraph 103 of the Counterclaims.

104. RichFX denies the allegations of paragraph 104 of the Counterclaims.

105. RichFX denies the allegations of paragraph 105 of the Counterclaims.

106. RichFX denies the allegations of paragraph 106 of the Counterclaims.

COUNT IX

107. With respect to paragraph 107 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 106 of the Counterclaims as though fully set forth herein.

108. RichFX denies the allegations of paragraph 108 of the Counterclaims.

109. RichFX denies the allegations of paragraph 109 of the Counterclaims.

COUNT X

110. With respect to paragraph 110 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 109 of the Counterclaims as though fully set forth herein.

111. RichFX denies the allegations of paragraph 111 of the Counterclaims.

112. RichFX denies the allegations of paragraph 112 of the Counterclaims.

113. RichFX denies the allegations of paragraph 113 of the Counterclaims.

COUNT XI

114. With respect to paragraph 114 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 113 of the Counterclaims as though fully set forth herein.

115. RichFX denies the allegations of paragraph 115 of the Counterclaims.

116. RichFX denies the allegations of paragraph 116 of the Counterclaims.

COUNT XII

117. With respect to paragraph 117 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 116 of the Counterclaims as though fully set forth herein.

118. RichFX denies the allegations of paragraph 118 of the Counterclaims.

119. RichFX denies the allegations of paragraph 119 of the Counterclaims.

COUNT XIII

120. With respect to paragraph 120 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 119 of the Counterclaims as though fully set forth herein.

121. RichFX denies the allegations of paragraph 121 of the Counterclaims.

122. RichFX denies the allegations of paragraph 122 of the Counterclaims.

123. RichFX denies the allegations of paragraph 123 of the Counterclaims.

124. RichFX denies the allegations of paragraph 124 of the Counterclaims.

COUNT XIV

125. With respect to paragraph 125 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 124 of the Counterclaims as though fully set forth herein.

126. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 126 of the Counterclaims, and therefore denies them.

127. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 127 of the Counterclaims, and therefore denies them.

COUNT XV

128. With respect to paragraph 128 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 127 of the Counterclaims as though fully set forth herein.

129. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 129 of the Counterclaims, and therefore denies them.

130. RichFX is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 130 of the Counterclaims, and therefore denies them.

COUNT XVI

131. With respect to paragraph 131 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 130 of the Counterclaims as though fully set forth herein.

132. RichFX denies the allegations of paragraph 132 of the Counterclaims.

133. RichFX denies the allegations of paragraph 133 of the Counterclaims.

134. RichFX denies the allegations of paragraph 134 of the Counterclaims.

COUNT XVII

135. With respect to paragraph 135 of the Counterclaims, RichFX incorporates by reference its above responses to paragraphs 1 through 134 of the Counterclaims as though fully set forth herein.

136. RichFX denies the allegations of paragraph 136 of the Counterclaims.

137. RichFX denies the allegations of paragraph 137 of the Counterclaims.

GENERAL DENIAL

138. RichFX denies each and every allegation, prayer, matter, fact or thing averred in Defendants' Counterclaims not expressly admitted herein.

AFFIRMATIVE DEFENSES

First Affirmative Defense

139. Defendants' Counterclaims, in whole or in part, fail to state claims upon which relief can be granted, and therefore should be dismissed.

Second Affirmative Defense

140. Defendants' Counterclaims based on state law and statutes, in whole or in part, are preempted by federal law and should be dismissed.

Third Affirmative Defense

141. Defendants' Counterclaims based on Georgia state law and statutes, in whole or in part, are inapposite under a New York conflicts of law analysis, and therefore should be dismissed.

Fourth Affirmative Defense

142. RichFX has not directly or indirectly literally infringed, contributed to the infringement of, infringed through the doctrine of equivalents or otherwise, nor induced others to infringe any valid and enforceable claim of U.S. Patent Nos. 6,535,889 and 6,557,006 (collectively, "Asserted Patents").

Fifth Affirmative Defense

143. The Asserted Patents are invalid for failure to meet one or more of the requirements for patentability set forth in 35 U.S.C. §§ 101, 102, 103 and /or 112.

RICHFX'S COUNTERCLAIMS

RichFX makes and files these Counterclaims against Defendants and states as follows:

NATURE AND BASIS OF ACTION

144. These Counterclaims (hereinafter “the Counterclaims”) seek a declaration pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202, that the Asserted Patents are invalid and have not been infringed by RichFX.

JURISDICTION AND VENUE

145. This Court has jurisdiction over the subject matter of RichFX’s claims of invalidity and non-infringement pursuant to 28 U.S.C. §§ 1331 and 1338 because this case arises under the Acts of Congress relating to patents, 35 U.S.C. §§ 101 et seq.

146. Upon information and belief the Asserted Patents are invalid under U.S. Patent Law and/or based on one or more of the requirements set forth in Title 35, United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103 and 112.

147. RichFX has not, at any time, infringed the Asserted Patents in any manner.

COUNT I

Declaration of Invalidity and Non-Infringement of U.S. Patent No. 6,535,889

148. RichFX incorporates herein and realleges, as if fully set forth in this paragraph, the allegations of Paragraphs 144 – 147 of the Counterclaims above, inclusive.

149. U.S. Patent No. 6,535,889 issued on March 18, 2003.

150. By virtue of Activ8now’s and Active8media’s filing of the Complaint herein, an actual controversy exists between Activ8now, Active8media and RichFX

with respect to the validity of the U.S. Patent No. 6,535,889 and RichFX's alleged infringement thereof.

151. U.S. Patent No. 6,535,889 is invalid under U.S. patent law and the Acts of Congress relating to patents, 35 U.S.C. §§ 101, et seq.

152. RichFX has not at any time infringed any claim of U.S. Patent No. 6,535,889.

COUNT II

Declaration of Invalidity and Non-Infringement of U.S. Patent No. 6,557,006

153. RichFX incorporates herein and realleges, as if fully set forth in this paragraph, the allegations of Paragraphs 144- 147 of the Counterclaims above, inclusive.

154. U.S. Patent No. 6,557,006 issued on April 29, 2003.

155. By virtue of Activ8now's and Active8media's filing of the Complaint herein, an actual controversy exists between Activ8now, Active8media and RichFX with respect to the validity of U.S. Patent No. 6,557,006 and RichFX's alleged infringement thereof.

156. U.S. Patent No. 6,557,006 Patent is invalid under U.S. patent law and the Acts of Congress relating to patents, 35 U.S.C. §§ 101, et seq.

157. RichFX has not at any time infringed any claim of U.S. Patent No. 6,557,006.

PRAYER FOR RELIEF

WHEREFORE, having fully answered and defended, RichFX prays that:

(1) Defendants take nothing by their Counterclaims;

(2) The Counterclaims be dismissed in their entirety and judgment be entered for RichFX and against Defendants on each and every Counterclaim;

(3) The Court enter a declaratory judgment that the Asserted Patents are invalid, and that RichFX has not infringed the Asserted Patents;

(4) The Court find this to be an exceptional case pursuant to 35 U.S.C. §285 and award RichFX its reasonable attorneys' fees;

(5) Defendants be required to pay to RichFX both the costs of this action and RichFX's reasonable attorneys' fees; and

(6) RichFX be granted such other different and additional relief as this Court deems just and proper.

JURY DEMAND

Defendant RichFX, Inc., respectfully demands a jury for all claims, defenses, and counterclaims.

Dated this 17th day of July 2006.

/s/ Robert E. Hanlon
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RichFX, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that I have filed a copy of the within and foregoing RICHFX, INC.'S AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO DEFENDANTS ACTIV8NOW, LLC'S AND ACTIVE8MEDIA, LLC'S AMENDED COUNTERCLAIMS, with the Clerk of the Court using the CM/ECF system which will send electronic notice of such filing to:

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Attorneys for Plaintiff Advance Magazine Publishers Inc. d/b/a The Conde Nast Publications and Advance Publications, Inc.

This 17th day of July 2006.

/s/ Robert E. Hanlon
Robert E. Hanlon